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<i>Kathy Mueller</i>	
Signature	8/17/05
Date	

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 09/674,052
 Applicant(s) : Ludwig Busam et al.
 Filed : October 25, 2000
 Title : Apertured Laminate Web
 TC/A.U. : 3761
 Examiner : Michele M. Kidwell
 Conf. No. : 9275
 Docket No. : CM1778Q
 Customer No. : 27752

PRE-APPEAL BRIEF REQUEST FOR REVIEW AND
NOTICE OF APPEAL

Mail Stop AF
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450

Dear Sir:

REMARKS

Claim Status

Claims 1, 3, 4, and 6-12, are pending in the present application. No additional claims fee is believed to be due.

Appl. No. 09/674,052
Atty. Docket No. CM1778Q
Amdt. dated August 17, 2005
Reply to Office Action of May 19, 2005
Customer No. 27752

Rejection Under 35 USC §102(b) Over Gilman

Claims 1, 3-4, and 6-12, are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,437,653, issued to Gilman et al., hereafter "Gilman". Applicants respectfully traverse the rejection by the Office.

Claim 1:

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Gilman fails to teach, either expressly or inherently, all of the elements of claim 1.

In general Gilman teaches an absorbent article having two co-apertured layers. (Abstract). Gilman further teaches that a cover 12 may include a plurality of apertures 18 which are formed therethrough. (col. 3, lines 31-32). Gilman also teaches an absorbent 14 having three separate and distinct absorbent layers 20, 22, and 24. (col. 4, lines 39-41). The absorbent layer 20 "also contains a plurality of apertures 26 coaxially aligned with at least some of the apertures 18 formed in the cover 12." (col. 5, lines 9-11).

First, claim 1 recites, in part, that a second material has a higher hydrophilicity than a first material. The Office asserts that Gilman teaches that a second material has a higher hydrophilicity than a first material and cites col. 6, lines 1-3. At col. 6, lines 1-3, Gilman teaches that "[b]oth layers 22 and 24 can be constructed of a hydrophilic material formed from various types of natural or synthetic fibers." (col. 6, lines 1-3). However, Gilman does not teach whether the absorbent layer 20 is more hydrophilic than the cover 12.

Claim 1 further recites, in part, that the first material has a plurality of apertures, and the second material has a plurality of apertures. As shown in Figure 2 of the application, the apertures extend through the first material and through the second material. As stated previously, Gilman teaches that the cover 12 and the absorbent layer 20 may include apertures therethrough. However, Gilman does not teach that the apertures of the absorbent layer 20 also extend through the absorbent layers 22 and 24.

So, if the Office asserts that Gilman teaches that a second material has a higher hydrophilicity than a first material, then the second material of Gilman includes the

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absorbent layers 20, 22, and 24. As previously stated, Gilman does not teach that the apertures of the absorbent layer 20 also extend through the absorbent layers 22 and 24. Consequently, because the absorbent layers 22 and 24 are included in the second material of Gilman, Gilman fails to teach a second material having a plurality of apertures.

In the alternative, if the Office asserts that Gilman teaches a second material having a plurality of apertures, then the second material of Gilman includes only the absorbent layer 20. As stated previously, Gilman does not teach whether the absorbent layer 20 is more hydrophilic than the cover 12. Consequently, because the second material of Gilman includes only the absorbent layer 20, Gilman fails to teach a second material having a higher hydrophilicity than a first material.

Second, claim 1 further recites, in part, "wherein said first material has a first bonded area and said second material has a second bonded area, and wherein said second bonded area is greater than said first bonded area." The Office asserts that Figure 1 of Gilman sets forth "wherein said first material has a first bonded area, said second material has a second bonded area, and wherein the second bonded area is greater than the first bonded area." (Paper No. 051105, page 2). For purposes of clarification, in Paper No. 122304, the Office previously stated:

If the entire bonded area (the length of the article as set forth in col. 3, lines 55 — 56) of the second material (20) is compared to only the outermost portion (i.e., the area to the left of the article in figure 1 where reference character "18" is located) of the bonded area of the first material (12), the second material (20) has a bonded area greater than a bonded area of the first material.

(Paper No. 122304, page 5).

Applicants assert that the Office has failed to give the term "bonded area" its ordinary and customary meaning that one of ordinary skill in the art would ascribe to the term or its meaning based on the application. Thermally bonded fiber webs are typically created by bonding the fibers which makeup the web together. Fibers of a thermally bonded web can be bonded via heated calender rolls. As the fibers pass through the heated calender rolls, the fibers are melted in certain spots to form bonds between the fibers. The calender rolls can be etched such that the number of bonds between fibers of a web are affected. For example, a first calender roll could produce a first web having a low number of fiber to fiber bonds such that the first web is soft. In contrast, a second

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calender roll could produce a second web having a high number of fiber to fiber bonds such that the second web has a high tensile strength.

In light of the above remarks, the term "first bonded area" of the first material refers to the percentage of fiber to fiber bonds in the first material. Similarly the term "second bonded area" pertains to the percentage of fiber to fiber bonds in the second material. Thus, the term "bonded area" is not attributed solely to a portion of the first material or solely to a portion of the second material. However, the Office's analysis compares the second material to only the outermost portion of the cover 12 and not the cover 12 in its entirety. So, the Office's analysis does not take into account the meaning attributed to the term "bonded area" in the application. Thus, the comparative analysis is inappropriate. Therefore, the comparative analysis does not establish that Gilman teaches a second material having a higher bonded area than a first material.

Moreover, while drawings can be used for the purposes of prior art, case law provides that in order for a drawing or picture to anticipate a claim, the drawing or picture must clearly show the claimed structure. *In re Mraz*, 455 F.2d 1069, 173 USPQ 25 (CCPA 1972). The Office relies on Figure 1 of Gilman to establish a difference between a bonded area of the cover 12 and a bonded area of the absorbent layer 20. However, Figure 1 does not show the bonded area of either the cover 12 or the absorbent layer 20, as the term is defined in the application. Consequently, the Figure 1 of Gilman cannot be relied upon to show a difference in bonded areas of the cover 12 and the absorbent layer 20.

For the foregoing reasons, Applicants assert that claim 1 is not anticipated by Gilman. Therefore, Applicants assert that claim 1 is in condition for allowance. Moreover, because claims 3-4, 6-9, and 11-12, depend from claim 1, Applicants assert that they are also not anticipated by Gilman and are therefore in condition for allowance.

Claim 10:

The Office asserts that "Gilman discloses a laminate web wherein the second material has a width greater than that of the first material as set forth in Figure 1." (Paper no. 051105, page 4). The Office, in its analysis, compares "the entire width of the second material (20)... to only the outermost width... of the first material (12)." (Paper No. 501150, page 4).

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As discussed in regard to Figures 1 and 2 of the application, the width of the first material pertains to the entire width of the first material and not just a portion thereof. Similarly, the width of the second material pertains to the entire width of the second material and not just a portion thereof. Because the comparative analysis performed by the Office between the entire width of the second material (20)... and only the outermost width... of the first material (12) does not take into account the meaning attributed to the term "width" in the application, the comparative analysis is inappropriate. Thus, Gilman does not teach that a second material has a greater width than a first material.

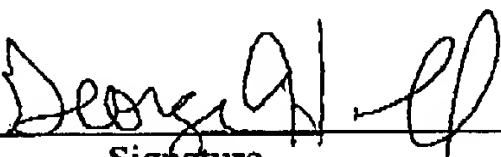
Because claim 10 depends from claim 1 and because of the foregoing arguments, in regard to claim 10, Applicants assert that claim 10 is not anticipated by Gilman. Therefore, Applicants assert that claim 10 is in condition for allowance.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 USC §102(b). Early and favorable action in the case is respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By 
Signature
George H. Leal
Registration No. 56,813
(513) 634-1597

Date: 8-17-05
Customer No. 27752

Page 5 of 5



Code: AP.PRE.REQ

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PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) CM1778Q	
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		First Named Inventor Ludwig Busam	
		Art Unit 3761	Examiner Michele Kidwell

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

attorney or agent of record.
Registration number _____

attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

Signature

George H. Leal

Typed or printed name

513-634-1597

Telephone number

8-17-05

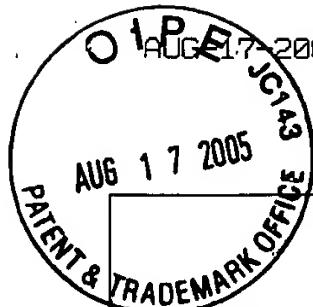
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PTO/SB/96 (09-04)

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OMB 0651-0031

STATEMENT UNDER 37 CFR 3.73(b)Applicant/Patent Owner: The Procter & Gamble CompanyAttorney Docket Number: CM17780Application No./Patent No.: 09/674,052Filed/Issue Date: October 25, 2000Entitled: Apertured Laminate Web

The Procter & Gamble Company, a Corporation
(Name of Assignee) (Type of Assignee, e.g., corporation, partnership, university, etc.)

states that it is:

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The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

8-17-05

Date

513-634-1597

Telephone Number

George H. Leal

Typed or Printed Name

56,813

Registration No.

Signature

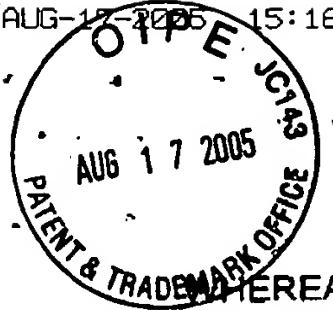
Attorney of Record

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Statement Under 37 CFR 3.73(b).doc

Revised 7/13/2004



AUG-12-2005 15:16

PROCTER & GAMBLE

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U.S. ASSIGNMENT

TRADEMARK WHEREAS we,

BUSAM, Ludwig
Talstraße 17
65510 Hofheim
DE

**FLOHR, Andreas
Hochfelder Str. 78
45478 Mülheim / Ruhr
DE**

DIVO, Michael
Feldbergstr. 14
61381 Friedrichsdorf
DE

respectively, have made a certain new and useful invention as set forth in an application for United States Letters Patent entitled: .

"APERTURED LAMINATE WEB"

Attorney's Docket CM1778Q/VJ executed by us, respectively, on the following dates:

May 20 1999
May 20 1999
May 20 1999

May 21, 1999

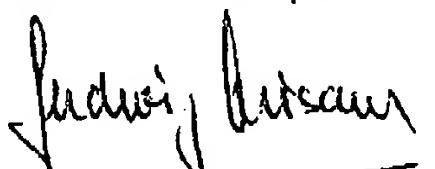
and Serial No. 09/674053, filed the 25th day of October, 192000
(the hereinafter named assignee being hereby authorized to insert Case Number, Serial
Number and filing date when ascertained):

AND WHEREAS, THE PROCTER & GAMBLE COMPANY, a corporation of the State of Ohio, having a place of business at Cincinnati, Ohio 45202, is desirous of acquiring the entire right, title, and interest in and to said invention and in and to any and all Letters Patent of the United States and Letters Patent in any and all foreign countries which may be obtained therefor;

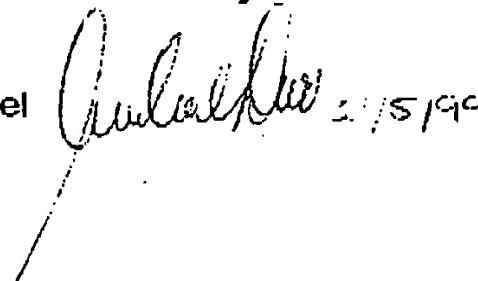
NOW THEREFORE, for good and valuable consideration, we do hereby sell, assign, transfer and set over unto the said THE PROCTER & GAMBLE COMPANY, its legal representatives, successors and assigns, the entire right, title and interest, including the right to claim priority of the filing date of said patent application under international conventions, in and to the said invention as set forth in said patent application, and in and to all patents of the United States and in any and all foreign countries which may be issued for said invention, as fully and completely as the same would have been held by us had this assignment and sale not been made. The said entire right, title and interest shall vest irrevocably in said THE PROCTER & GAMBLE COMPANY. We further agree upon request, without additional compensation but at no expense to us, to execute or assent to foreign applications, and to execute all other legal documents as may be necessary or desirable to vest the enjoyment of the rights hereby transferred in THE PROCTER & GAMBLE COMPANY, its legal representatives, successors and assigns, or as said Company may direct.

AND we request the Commissioner of Patents to issue any Letters Patent of the United States which may be issued for said invention to said THE PROCTER & GAMBLE COMPANY, its legal representatives, successors or assigns, as the sole owner of the entire right, title and interest in and to said patent and the invention covered thereby.

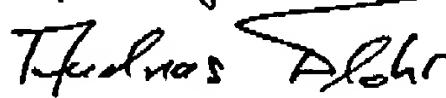
BUSAM, Ludwig



DIVO, Michael


1/5/99

FLOHR, Andreas

**Legalization Required**

)
)SS
)

On this _____ day of _____ 19____ before me personally appeared BUSAM, Ludwig, to me known to be the person named in and who executed the above instrument, and acknowledged to me that he executed the same for the uses and purposes therein set forth.

Notary

)
)SS
)

On this _____ day of _____ 19____ before me personally appeared DIVO, Michael, to me known to be the person named in and who executed the above instrument, and acknowledged to me that he executed the same for the uses and purposes therein set forth.

Notary

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